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13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA**  
14 **UNLIMITED JURISDICTION**

15 WEICHIAO KU and PI-LIEN KUO,  
16 Plaintiffs,  
17 v.  
18 HARALD HERCHEN, *et al.*  
19 Defendants.

Case No. 21CV376210

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE,  
SUMMARY ADJUDICATION**

Dept.: 20  
Judge: Hon. Socrates Manoukian

Hearing Date: December 8, 2022  
Hearing Time: 9:00 a.m.

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23  
24 Plaintiffs Weichiao Ku and Pi-Lien Kuo ("Plaintiffs") hereby oppose the Motion for  
25 Summary Judgment of Defendant Harald Herchen to the First Amended Complaint on the grounds  
26 that there are triable issues of material fact as to the wrongful death cause of action stated against  
27 Defendant, and therefore summary judgment should be denied.  
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I.

INTRODUCTION

Wrongful death suits cannot involve admissible testimony by the decedent, so, by their nature, they are supported by evidence from percipient witnesses, expert witnesses, and other circumstantial evidence. Since the plaintiff in a wrongful death case may likely not have been at the scene of the death of the decedent, the Defendant's recounting of events is subject to extreme bias, and the facts as alleged by defendants commonly require detailed analysis and corroboration. Here, of particular import is that the Defendant has admittedly lied under oath, as well as on other occasions. (Plaintiffs' Separate Statement of Material Facts Opposing Motion for Summary Judgment/Adjudication "PSS," §§1,2.) His veracity is accordingly highly doubtful and his willingness to perjure himself calls into question the credibility of his testimony of the events related to Alice Ku's disappearance and death, or any of his other statements.

This lawsuit arises out of the sinister and mysterious disappearance of Alice Ku, which Plaintiff alleges is the direct and proximate result of the intentional actions of Defendant, which ultimately ended Alice Ku's life. Decedent Alice Ku ("the Decedent"), who was the Plaintiffs' daughter, traveled to Taiwan with her husband, Defendant Harald Herchen, and was never seen or heard from again. Her passport has been inactive since arriving in Taiwan, as have her phone, email, and all financial footprints. She has not communicated with any family or friends, nor with any of the students participating in her self-owned and run tutoring business. Alice Ku has disappeared, and her family, friends, and Taiwanese police and government officials all believe that she is dead; importantly, the Taiwan Criminal Investigation Bureau (CIB) who has been investigating is treating this as a homicide and an arrest warrant has been issued for Defendant Herchen. (PSS, ¶¶ 4, 6.) *After* her unexplained disappearance, a pretextual email message was purportedly sent to Defendant from Alice Ku's email account. The Defendant claims this email was sent by Alice, purporting to explain her suspicious disappearance. However, the IP address associated with the email and the email's electronic time stamp reveal that the email was sent from the couples' hotel *after* Defendant (per his own rendition of events) dropped Alice off at the train station (the last time he saw her). This conflict in Defendant's explanations – the first of many -- and his inability to provide any supporting

1 evidence, is telling. The email fabrication by the Defendant, combined with his admitted false  
2 testimony under oath, other conflicting statements to the Ku family, and his evasive and suspicious  
3 behavior since Alice Ku's disappearance constitute overwhelming evidence of his involvement in  
4 Alice Ku's disappearance and death.

5 **II.**

6 **RELEVANT HISTORY**

7 **A) The First Version of Events Told by Defendant**

8 Harald Herchen, Alice's husband and the last person to see her, first recounted their early  
9 relationship history in his October 29, 2020, deposition under oath. Defendant Herchen testified that  
10 he met Alice Ku in June, 2017 – approximately two weeks after his previous wife died – and they  
11 immediately began dating. (PSS, ¶ 1.) They were married less than four months later on October 6,  
12 2017. (*Ibid.*) They began living together approximately 2 months later in December, 2017, at an  
13 apartment in Mountain View, the only residence the couple ever shared. (*Ibid.*) Defendant Herchen  
14 confirmed Alice's family's understanding that Alice ran a self-owned tutoring business, making a  
15 rough-estimated \$140,000 annually. (*Ibid.*)

16 The couple left for Taiwan on November 23, 2019, arriving into Taipei November 24. (*Ibid.*)  
17 Defendant Herchen expected to spend about two days working while they were there, and then rest of  
18 the one-week trip would be spent vacationing. (*Ibid.*) After spending one night in each of several  
19 different cities throughout Taiwan, Defendant Herchen testified that Alice told him on November 29,  
20 2019, that she might want to visit her parents. (*Ibid.*) Defendant Herchen claims that she was  
21 undecided about the visit, and that a driver drove them sight-seeing that day, seeing "gorges and  
22 waterfalls and rocky places" that Alice did not like. (*Ibid.*) Alice finally decided later in the day to  
23 see her parents, but according to Defendant Herchen, did not return to the hotel for any luggage or  
24 belongings, leaving instead to visit her parents with just a small day-pack backpack (*Ibid.*)  
25 Defendant Herchen and the driver purportedly dropped Alice off at the train station in Hualien at  
26 approximately 6:00 pm, where the driver also left the car and appeared to go to the train station.  
27 (*Ibid.*) Defendant Herchen did not call, text, or email Alice to see if she caught the train, nor did he  
28 call, text, or email Alice to determine whether she arrived safely to her parents' house, nor did he

1 call, text, or email Alice to check in on her at all. (*Ibid.*) In fact, Defendant Herchen never saw or  
2 spoke to Alice again, and did not communicate with her but for a single purported email exchange on  
3 November 29, 2010 (“the Nov. 29 Email”). (*Ibid.*)

4 **B) The Second, and Very Different, Version of Events Told by Defendant**

5 Defendant Herchen then recounted another version of the couples’ relationship history more  
6 recently, on September 19, 2022 (following a motion for protective order limiting the deposition to  
7 two hours). In this later edition, Defendant Herchen changes several aspects of his testimony, and  
8 significantly, admits to perjuring himself in his first testimony.

9 In Defendant Herchen’s new version of events, he first met Alice – whom he claims was then  
10 using a different name – in either 2013 or 2014. (PSS ¶1.) Defendant Herchen claims that he hired  
11 Alice for sexual related activities at least twice in 2013 or 2014, and paid her \$400 each time. (*Ibid.*)  
12 Defendant Herchen testified that he then met Alice five to ten additional times in 2016 or 2017 to  
13 engage in sexual activity. (*Ibid.*) Then after Defendant Herchen’s wife died in 2017, he saw Alice  
14 again for a series of approximately 15 meetings with the intention of engaging in sexual activities.  
15 (*Ibid.*)

16 After providing this vastly different testimony regarding how and when the couple met,  
17 **Defendant Herchen confirms under oath that he in fact willingly provided false testimony in**  
18 **his prior deposition.** (PSS ¶ 2.) Defendant Herchen testified that he lied to friends and family when  
19 he told them he injured his arm, and even wore a sling or cast that made it look like his arm was  
20 injured – but then claims that he was faking it and did not actually injure his arm. (PSS ¶¶1, 2.)  
21 Thereafter Defendant Herchen testified that he did in fact hurt his wrist, before the trip to Taiwan  
22 with Alice, but that he lied and told people he injured it at his sister’s wedding; Defendant Herchen  
23 then testified that he did not attend his sister’s wedding, having lied about an arm injury as an excuse  
24 to not attend the wedding. (*Ibid.*) He actually hurt his wrist after getting so angry he lost his temper  
25 and punched a bookshelf. (*Ibid.*)

26 Whereas in his first deposition Defendant Herchen testified that he never tried to call or text  
27 Alice after dropping her at the train station on November 29, in his second deposition Defendant  
28 Herchen recalls that he tried to call her maybe once that evening. (PSS ¶¶ 1, 2.)

1 After emailing Alice in December, 2019, Defendant Herchen has made no other efforts to  
2 locate Alice whatsoever. (PSS ¶ 9.) In January, 2020, shortly after initial contact with the Plaintiffs'  
3 son, George Ku, Defendant Herchen sent George an email stating that the Decedent's disappearance  
4 was a priority and that he "already spent considerable sums in getting Alice to comeback" (PSS ¶¶ 9,  
5 11.) , but then admitted in his deposition that his email to George was untruthful and false. (*Ibid.*)  
6 Harald then confirmed his deception and lies by admitting that he has not spent any money  
7 attempting to locate his wife other than purchasing a plane ticket to return to Taiwan one week after  
8 her disappearance. (*Ibid.*) Further confounding matters, Defendant also testified that he never sent  
9 that email to George Ku, and that the contents of such an email would be false. (*Ibid.*)

10 Alice has not been seen or heard from by her family since November 26, 2019. (PSS ¶¶ 6,  
11 10.) Her passport has been inactive since arriving to Taiwan, as have her phone, email, and all  
12 financials. (PSS ¶¶ 3, 5.) She has not communicated with any family or friends, nor with any of the  
13 students participating in her self-owned and run tutoring business. (PSS ¶¶ 6, 10.) Alice Ku has  
14 disappeared, and her family, friends, and Taiwanese police and government officials all believe that  
15 she is dead and the victim of homicide. (PSS ¶¶ 3, 6.)

16 Significantly, Defendant Herchen admitted that, before his deposition was taken in this  
17 matter, he unilaterally *destroyed* Alice's electronic devices, including 4 laptop computers. (PSS ¶¶  
18 13, 14.) He destroyed them *after* he hacked the devices and examined them. He destroyed them *after*  
19 George Ku was appointed as Alice's Conservator; He destroyed them *after* missing persons  
20 investigations were underway by American and Taiwanese law officials; He destroyed them *after*  
21 this case was initiated; He destroyed them *after* discovery had begun in this matter (*Ibid.*) Notably,  
22 he destroyed Alice's property at a time when he allegedly believes she is alive and well. There is no  
23 other logical conclusion that can be reached other than that Defendant Herchen intentionally  
24 destroyed evidence in this case that would further implicate and prove his wrongdoing.

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III.  
LEGAL ARGUMENT

A. Courts Must Look at the Evidence in a Light Most Favorable to the Opposing Party in Ruling on Summary Judgment/Adjudication

A defendant moving for summary judgment must show either that the plaintiff cannot establish one or more elements of a cause of action or that there is a complete defense to the action. *Code of Civil Procedure* (“C.C.P.”) §437c(o) and (p). If the defendant makes the required showing, the burden then shifts to the plaintiff to present evidence that there is a triable issue of material fact. *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 780. There is a triable issue if the evidence would allow a reasonable trier of fact to find the underlying fact in favor of plaintiff. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. “[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law.” *Aguilar, supra*, 25 Cal.4th at p. 850. “All doubts as to whether there are any triable issues of fact are to be resolved in favor of the party opposing summary judgment.” *Ingham v. Luxor Cab Co.* (2001) 93 Cal.App.4th 1045, 1049. In ruling on the motion, a court must “consider all of the evidence” and “all” of the “inferences” reasonably drawn there from, and must view such evidence and such inferences, in the light most favorable to the opposing party. *Code of Civil Procedure* (“C.C.P.”)§437(c)(c); *Aguilar, supra*, 25 Cal.4th at p. 843.

B. Summary Judgment of Plaintiffs’ Wrongful Death Cause of Action Should Be Denied Because Genuine Triable Issues of Fact Exist Regarding The Death of Alice Ku.

A wrongful death action, created entirely by statute, is an action for damages for the death of one person when that death is caused by the wrongful act or neglect of another. *Code Civ. Proc.* §377.60. Thus, the commission of a tortious act and a resulting death causing pecuniary loss to persons entitled to a cause of action under the wrongful death statute are the only necessary elements in a cause of action for wrongful death. *Moxon v. County of Kern* (1965) 233 Cal. App. 2d 393, 398–399.

1 In his Motion, Defendant Herchen seeks summary judgment of the wrongful death cause of  
2 action on the ground that there can be no triable issue of fact as to the death of Alice Ku because her  
3 death has not been established.

4 Ideally, and typically, wrongful death claims involve circumstances in which the decedent's  
5 remains have been recovered. Despite this, a wrongful death action is not defeated by absence of a  
6 decedent's remains, and in fact, several alternative options exist to establish death in cases, such as  
7 this case, where the decedent died as a result of foul play, or where a perpetrator disposes of the  
8 deceased body in an effort to avoid punishment for their crime.<sup>1</sup>

9 1. Presumption of Death in Evidence Code Section 667 and Exceptions.

10 The Evidence Code offers a presumption of death in certain limited circumstances. *Evid.*  
11 *Code* §667. Evidence Code section 667 states that if a person is not heard from in five years they are  
12 presumed to be dead. This is a presumption affecting the burden of proving death. A presumption  
13 affecting the burden of proof is a presumption established to implement some public policy other  
14 than to facilitate the determination of the particular action in which the presumption is applied. *Evid.*  
15 *Code* §605. The effect of a presumption affecting the burden of proof is to impose upon the party  
16 against whom it operates the burden of proving the nonexistence of a presumed fact. *Evid. Code*  
17 §606; *Conservatorship of Geiger* (1992) 3 Cal.App.4th 127.

18 The presumption of death maybe be overcome with evidence the missing person was subject  
19 to either a specific peril or intervening circumstances or conditions sufficient to quicken the statutory  
20 period. The evidence need not be direct or positive, it need only be of such character as to make it  
21 more probable that the person died at a particular time than (s)he survived. *Pollock v. Hamm* (1970) 3  
22 Cal.3d 264. Once the evidence to overcome the presumption is established by the Proponent of its  
23 application, the burden shifts to the opposing party to rebut the presumption. *Conservatorship of*  
24 *Geiger* (1992) 3 Cal.App.4th 127.

25 The last person to see or hear from Alice Ku was the Defendant, who claims that he last saw  
26 her on November 29, 2019, while they were traveling together in Taiwan. It has been longer than that  
27

28 \_\_\_\_\_  
<sup>1</sup> Plaintiffs' here strongly believe this to be the case with regard to their daughter..

1 since Plaintiff or the rest of Alice's family has seen or heard from her. Thus, approximately 3 years  
2 have passed since anyone has seen or heard from Alice Ku. (PSS ¶¶ 3-6, 10.)

3 While only 3 years have passed since Alice Ku's death and disappearance, the 5-year  
4 requirement of Evidence Code section 667 can be, and should be determined to be, overcome in these  
5 circumstances. There is myriad evidence showing that other circumstances or conditions  
6 existed/intervened sufficient to quicken the period of time necessary to establish the presumption that  
7 Alice Ku is dead. Based on the evidence available to date, and on Defendant's inability to produce  
8 any credible, admissible counter evidence, it is *more probable that Alice died in Taiwan on or about*  
9 *November 29, 2019, than survived.*

10 For the several reasons identified below, and based on the overwhelming evidence of the  
11 same, Plaintiffs have established that it is more probable that Alice Ku died during the time she was  
12 in Taiwan with Defendant, than survived.

13  
14 **1. Taiwanese Law Enforcement Presumes Alice's Disappearance Is Because of Her**  
15 **Death and Are Treating it as Homicide.**

16 Taiwanese law enforcement officials have declared they presume Alice Ku is dead, and that  
17 they are investigating her disappearance and death as a homicide. (PSS ¶ 4.) Special Investigator Li  
18 Tsung Su of the Criminal Investigation Bureau of Taiwan's National Police Agency confirmed that  
19 Taiwan is investigating Alice's disappearance as a homicide, that they believe Alice is dead, and that  
20 she was killed by homicide. (*Ibid.*) Defendant Herchen has an outstanding warrant in Taiwan arising  
21 out of Alice's homicide. (*Ibid.*)

22  
23 **2. No One From Decedent Alice Ku's Family, Friends, or Former Workplace Have**  
24 **Not Seen Or Heard From Decedent In 3 Years.**

25 George Ku, Alice's brother and Plaintiffs' attorney in fact, has not seen Alice, or heard from  
26 her since before Alice and Defendant Herchen left for Taiwan on November 23, 2019. She has not  
27 communicated with George by phone, text, or email since departing to Taiwan (PSS ¶ 6.)  
28 Additionally, Decedent has not communicated with any of her five siblings, including Josephine,  
with whom Alice was closest. (*Ibid.*) Up to and including November 26, 2019, Decedent texted



1 nearly daily with Josephine, but since November 26, 2019, Josephine has been unable to reach  
2 Decedent, has not received any response to any forms of communication efforts to Decedent, and not  
3 received any communication of any kind initiated by her sister. (*Ibid.*) This is extremely out of  
4 character.

5 Defendant Herchen never saw or spoke to Alice again after purportedly dropping her at the  
6 train station on November 29, 2019, and did not communicate with her in ANY way with one  
7 purported exception. (PSS ¶¶ 7, 9, 11.) Defendant Herchen claims to have received an email from  
8 Alice, on November 29, 2019 (“the Nov. 29 Email”), the circumstances of which are discussed at  
9 length herein. (PSS ¶ 1.) He has had NO contact whatsoever with Alice other than his claimed  
10 receipt of the Nov. 29 Email. (PSS ¶¶ 7, 9, 11.) Defendant Herchen himself admits that he does not  
11 know anyone who has seen Alice or had any communications with Alice since the Nov. 29 Email and  
12 admits that he has made no efforts to find her. (PSS ¶¶ 1, 7, 9, 11.)

13 Friends have reached out to the family and even made independent police reports out of deep  
14 concerns for Decedent’s uncharacteristic and unexplained absence (PSS ¶ 10.) In addition to her  
15 family, Alice had started, grown, and was committed to her tutoring business for students. She loved  
16 the work and was dedicated to her students. Alice was not the type of person to abandon her students  
17 or to leave them without explanation, in the same way she would not have abandoned her family.  
18 (PSS ¶¶ 6, 10.)

19  
20 **3. Decedent’s Finances Have Been Wholly Inactive Since Before She Left for**  
21 **Taiwan.**

22 Plaintiffs’ son, George, who is Decedent’s Conservator,<sup>2</sup> has confirmed that Alice’s financial  
23 holdings, bank accounts, credit cards, and the like, have not been accessed or used since before Alice  
24 left for Taiwan. (PSS ¶ 5.) Alice failed to pay her credit card bill in December 2019 for the first time.  
25 (PSS ¶ 5.) She did not make any large withdrawals, or even regular cash withdrawals prior to her

26 \_\_\_\_\_  
27 <sup>2</sup>On December 19, 2019, after her family had not seen or heard from Alice in almost a month, after police reports were  
28 filed and investigations underway, Plaintiff filed a Petition for Conservatorship of a Missing Person in Santa Clara County  
(Case No. 19-PR-187385.)

1 trip, nor does it appear that she was stockpiling money that would be necessary for her to live a  
2 prolonged amount of time without leaving *any* financial footprint. (*Ibid.*)

3 **4. Decedent's Passport Has Not Been Used or Presented At Any Border Since**  
4 **Arriving to Taiwan.**

5 In addition, Alice's US passport has been wholly inactive, and has not been used or presented  
6 at any border crossing since arriving to Taiwan on November 24, 2019. (PSS ¶ 3.) Li Tsung Su  
7 confirmed with the Taiwanese National Immigration Agency during his investigation that Alice's  
8 passport was not used to leave Taiwan or enter any other country. (*Ibid.*) Alice did not have any  
9 other active passport other than her U.S. passport. (*Ibid.*)

10 **5. The Purported Last Email From Defendant Is Pretextual, An Effort to Cover Up**  
11 **Decedent's Homicide, and Was Sent by Defendant Himself.**

12 Defendant Herchen claims the last communication he received from Decedent was the Nov. 29  
13 Email – allegedly sent by Decedent from her parents' house after arriving there late on November 29,  
14 2019, and November 30 Taiwan time. (PSS ¶¶ 1, 7.) The Nov. 29 Email, Exhibit B to the first  
15 deposition of Harald Herchen, says in part, "...I got here okay. Since you'll be at your sister's  
16 wedding on my birthday, can you please change my flight to one week later. ..." (PSS ¶¶ 1, 7.)

17 However, the Nov. 29 Email was, with certainty, not sent from Decedent's parents' area of  
18 Taiwan. The Nov. 29 Email was sent from the hotel in Haulien where Defendant and Decedent were  
19 staying when Alice purportedly left by train on November 29, 2019. (PSS ¶ 7.) The IP address of  
20 the email is that of the hotel Wi-fi in Hualien, which is where the victim's email account was still  
21 logged in to her Google Gmail account, using the web interface of Gmail. (*Ibid.*) The timestamp of  
22 the Email is consistent with most of the other emails that Alice sent from Taiwan, in that the device  
23 that sent the email was not on the Taiwan time zone; It was on the Pacific time zone (UTC -8), rather  
24 than the Taiwan time zone (UTC +8), which is confirmed by the email headers and the Google-  
25 produced mailbox file for the victim's email account. (*Ibid.*)

26 In addition, Alice did not have her computer with her at that time, according to Defendant,  
27 she had left it in the hotel. (PSS ¶¶ 1, 7.)  
28

1           **6. Defendant Herchen Destroyed Alice’s Electronic Devices *After* This Case Was**  
2 **Initiated and *Before* Plaintiffs Could Examine them. Himself.**

3           Significantly, Defendant Herchen admitted that, before his deposition was taken in this  
4 matter, he hacked, examined, and then *destroyed* Alice’s electronic devices, including 4 laptop  
5 computers. (PSS ¶¶ 13, 14.) He destroyed them *after* George Ku was appointed as Alice’s  
6 Conservator; He destroyed them *after* missing persons investigations were underway by American  
7 and Taiwanese law officials; He destroyed them *after* this case was initiated; And he destroyed them  
8 *after* discovery had begun in this matter (*Ibid.*) Notably, he destroyed Alice’s property at a time  
9 when he allegedly believes she is alive and well. There is no other logical conclusion that can be  
10 reached other than that Defendant Herchen intentionally destroyed evidence in this case that would  
11 further implicate and prove his wrongdoing.

12           **C. This Court Should Disregard or At a Minimum Question the Veracity of Any**  
13 **Evidence Given by the Defendant Because He Willingly Gave False Testimony.**

14           Defendant Herchen is an admitted perjurer. (PSS ¶ 2. In addition, he openly lied about  
15 making any efforts to find his missing wife, when in fact he made none (which is in and of itself  
16 significant and disturbing) and lied to family, friends, and this Court (via his deposition testimony)  
17 about the mysterious wrist injury he returned home from Taiwan with on November 30, 2019. (PSS  
18 ¶¶ 1, 2, 9, 11.)

19           It is well settled law that the trier of fact may disregard all of the testimony of a party if it  
20 determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780;  
21 CACI 5003; *Nelson v. Black* (1954) 43 Cal.2d 612; *Halagan v. Ohanesian* (1967) 257 Cal. App.2d  
22 14, 21.) The nonexistence of a fact testified to is relevant insofar as it is an indication of the witness’  
23 general truthfulness and credibility on the witness stand, and for this reason juries are instructed that  
24 a witness wilfully false in one part of his testimony is not to be trusted in others. (*People v. Lavergne*  
25 (1971), 4 Cal. 3d 735). Indeed, Evidence Code section 780 specifies that the trier of fact may  
26 consider, in determining the credibility of a witness any matter that has any tendency in reason to  
27 prove or disprove the truthfulness of his testimony at the hearing, including but not limited to (e) his  
28 character for veracity and honesty or their opposites, and (k) his admission of untruthfulness. In trial,  
the refusal to give an instruction on this point is error. (CACI 5003.)

1 Based on Defendant's admitted perjury, as well as the myriad examples of his testimony  
2 evidencing his willingness to lie to friends and family regarding different topics, any evidence  
3 provided by Defendant should be given no weight and this Court should not trust any testimony  
4 given by Defendant.

5  
6 **IV.**

7 **CONCLUSION**

8 Defendant Herchen's inconsistencies, his circular story-telling, and his outright perjury and  
9 lying erode the admissibility of what little actual evidence Defendant has offered, and further erodes  
10 all credibility his testimony may have otherwise carried. Plaintiffs' Opposition to this Summary  
11 Judgment Motion, on the other hand, contains compelling, credible and admissible evidence  
12 supporting Plaintiffs' sad belief that their daughter, Alice Ku, is dead, and that her death was caused  
13 by Defendant Herchen. As to the elements of Plaintiffs' wrongful death claim, Plaintiffs' have  
14 presented *more* than enough evidence to establish that there are triable issues of material fact for the  
15 trier of fact to decide, including a determination of whether Alice Ku is dead, and whether Defendant  
16 Herchen was a substantial factor in causing her death. The Plaintiffs' have offered sufficient  
17 admissible evidence to prevail on this motion and at trial. Defendant's Motion should accordingly be  
18 denied in its entirety.

19 Dated: November 23, 2022

FARLING, HECHT & DAVIS

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22 By: 

TODD K. DAVIS  
Attorney for Plaintiffs

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TABLE OF CONTENTS

I. Introduction ..... 1

II. Relevant History ..... 3

    A) The First Version of Events ..... 3

    B) The Second and Very Different Version ..... 4

III. Legal Argument ..... 6

    A) The Court Must Look at the Evidence in a Light  
        Most Favorable to the Opposing Party ..... 6

    B) Summary Judgment of the Plaintiff's Wrongful  
        Death Cause of Action Should be Denied ..... 6

        1. Presumption of Death in Evidence Code 669 ..... 7

        1. Taiwan Law Enforcement Presumes Death and  
           Treating as Homicide ..... 8

        2. Alice Ku's Family and Workplace Has Not Seen or  
           Heard from Alice in Three Years ..... 8

        3. Decedent's Financial Have Been Inactive ..... 9

        4. Decedent's Passport Has Not Been Used ..... 10

        5. The Purported Last Email From Alice Is  
           Pretextual and Was Sent by The Defendant ..... 10

        6. Defendant Herchen Destroyed Alice's Electronics . 11

    C. This Court Should Disregard or At a Minimum  
        Question the Veracity of Any Evidence Given  
        By the Defendant Because He Willingly Gave  
        False Testimony ..... 11

IV. Conclusion ..... 12

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TABLE OF AUTHORITIES

Saelzler v. Advanced Group 400 (2001) 25 Cal.4th 763, 780.5  
Aguilar v. Atlantic Richfield (2001) 25 Cal.4th 826, 850...6  
Ingham v. Luxor Cab Co. (2001) 93 Cal.App.4th 1045, 1049..6  
Moxon v. County of Kern (1965) 233 Cal.App.2d 393, 398-99.6  
Conservatorship of Geiger (1992) 3 Cal.App. 4 127.....7  
Pollock v. Hamm (1970) 3 Cal.3d 264 .....7  
Nelson v. Black (1954) 43 Cal.2d 612 .....11  
Halagan v. Ohanesian (1967) 257 Cal.App.2d 14, 21.....11  
People v. Lavergne (1971) 4 Cal.3d 735 .....11

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CALIFORNIA STATUTES

Code of Civil Procedure section 437(c) (p) .....	5,6
Code of Civil Procedure section 377.60 .....	6
Evidence Code section 667 .....	6,7
Evidence Code section 605 .....	7
Evidence Code section 606 .....	7
Evidence Code section 780 .....	11
Civil Jury Instruction (CACI) 5003 .....	11